

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Motion Picture Association of America, Inc.)	CSR-7947-Z
)	
Petition for Waiver of 47 C.F.R. § 76.1903)	MB Docket No. 08-
82		

COMMENTS OF VUDU, INC.

Comes now the comments of VUDU, Inc. (“VUDU”), in support of the Petition for Waiver of 47 C.F.R. § 76.1903 (“Petition”) submitted by the Motion Picture Association of America (“MPAA”).¹

VUDU supports the original intent of the ban on “Selectable Output Control” (“SOC”) set forth in Section 76.1903, as it is of great benefit to the consumer, and by extension the content providers. VUDU has a strong belief that the wide unchecked use of SOC by content providers would diminish the value of home audio/visual equipment purchased specifically for the purpose of lawfully viewing movies in “high definition” (“HD”).² If consumers are barred from utilizing their equipment for its expected use, it is safe to assume that not only would the electronics industry

¹ Motion Picture Association of America Petition for Waiver of 47 C.F.R. § 76.1903, *Petition for Expedited Special Relief*, CSR-7947-Z, MB Docket No. 08-82 (Filed May 9, 2008)

² “high definition” (as the term is commonly used in the industry), includes, without limitation: (i) 1080 active interlaced or progressive lines of resolution; or (ii) 720 progressive lines of resolution using a 16:9 aspect ratio.

be irreparably damaged, but the concurrent result would be a loss of interest in the content the providers seek to protect.

Setting the above concerns aside, VUDU does believe that under certain narrow circumstances SOC could benefit both the consumer and the content providers. The MPAA, in its Petition, seeks a waiver for what it refers to as “new business models”.³ Specifically, the MPAA seeks to partner with multi-channel video programming distributors (“MVPDs”) in the distribution of HD content to consumers for general in-home viewing prior to the content being released on prerecorded media (*e.g.* DVDs).⁴ VUDU supports this use of SOC for the very limited purpose expressed by the MPAA in its Petition.

VUDU agrees with the MPAA that there are risks associated with the release of digital HD content prior to the date the content is release on prerecorded media⁵. VUDU also recognizes that without the use of SOC the content providers do not have enough incentive to make HD content available to consumers prior to the release date of prerecorded media, as the risk of illegal copying and distribution would outweigh the benefit to consumers. Therefore, allowing content providers to utilize SOC to deliver high value, highly sought after content for in-home viewing prior to the prerecorded media release date is beneficial to the consumer as they would have access to content not otherwise available.

While VUDU does support the Petition, for the limited purposes stated herein, it is worth noting that a large number of home theater enthusiasts utilize technology that would not be compatible with the use of SOC sought under the Petition. Specifically, based on the lack of a cost effective means to utilize HDMI as a whole-home video wiring solution, the market for custom installed multi-room home theater systems, a market that is rapidly expanding in terms of number of

³ Petition at 2.

⁴ Id. at 2.

⁵ “Distribution over insecure outputs would facilitate the illegal copying and redistribution of this high value content...”. Id. at 3.

installations, has overwhelmingly opted for component cables as the preferred means of distributing video through the home. Under the proposed Petition, SOC would block content from being distributed via component outputs. This point is troubling to VUDU, as the Petition does not seem to recognize the significance and value of providing content to this large number of enthusiastic consumers of HD content.

VUDU does hereby recommend that the Commission ensure the protection of consumer interests by imposing certain conditions on the waiver. Specifically, the Commission should:

1. Make the waiver only apply to the specific content described by the MPAA in its Petition (HD content released for in-home viewing prior to the release of prerecorded media, and only for the period of availability prior to release of prerecorded media, after which SOC would not be allowed);
2. Make the waiver temporary. A provisional two-year period would give all interested parties a chance to evaluate the “new business models” suggested by the MPAA. Continuation of the waiver after the provisional period, whether on a temporary or permanent basis, should be based to a significant degree on the presentation of evidence that the distribution of HD content over component cables has actually resulted in illegal copying and redistribution of content;
3. Ensure for the broadest possible lawful use of the content by making sure that content is available to all services providers across a broad spectrum of delivery formats and technology. This would include the ability to deliver HD content over the internet, to a wide variety of set top boxes;
4. Ensure that SOC is implemented using a single, open, and nationally available technology;
5. Prevent service and content providers from misusing SOC to discriminate against retail devices in favor of proprietary devices; and

6. Require service and content providers to work together to implement SOC in a manner that does not confuse consumers. This includes requiring an appropriate consumer warning, prior to purchase, that the content may not be compatible with all output sources on the consumer's audio/visual equipment. The MPAA's suggestion that the content be "messed to consumers as being available only to those subscribers who have the appropriate equipment..."⁶ is not appropriate as consumers may have the appropriate equipment, but are lawfully utilizing the equipment with incompatible outputs (*e.g.* connecting a set top box with both HDMI and component outputs to a television set via the incompatible component outputs). Clear notice as to the availability of the content is of the utmost importance otherwise consumers will be confused, and ultimately disenfranchised, with the service providers and the content.

Accordingly, VUDU supports the limited waiver of 47 C.F.R. § 76.1903 as requested by the Motion Picture Association of America, subject to the conditions set forth above.

Respectfully submitted,

__//Edward Lichty//_____

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⁶ Id. at 5.

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Dated: July 30, 2008

CERTIFICATE OF SERVICE

I, Michael Riskin, a law clerk at the law firm of Berman Entertainment & Technology Law, hereby certify that on this 30th day of July, 2008, I caused a copy of the foregoing Comments on Petition for Expedited Special Relief to be served by first-class mail, postage prepaid (except as otherwise indicated), to the following:

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/s/

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